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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.R., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.G., Defendant and Appellant.	E071397 (Super.Ct.No. J250015) OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G. Pace, Judge. Affirmed.

Mansfield Collins for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, Svetlana Kauper, Deputy County Counsel for Plaintiff and Respondent.

Mother, J.G., lost custody of her then six-year-old daughter D.R. in 2012 in Los Angeles, when mother and her live-in boyfriend, both high on PCP, were involved in a domestic violence incident that resulted in serious injuries to mother. Two years later, as the case approached the permanency hearing stage, it was transferred to San Bernardino. Mother, whose parental rights had been terminated respecting three older children, did not reunify with D.R. because she continued to use prescription opiates for pain resulting from the domestic violence incident, rather than non-opiate alternatives. She also continuously pressured the child to tell the court she wanted to return to her mother, and she did not benefit from domestic violence services. In 2015, the minor's caretakers became her legal guardians.

In 2018, the guardians sought to change the permanent plan to one of adoption, because the minor wanted to be adopted by her guardians. Mother submitted a Notification of Indian Status. When tribal responses indicated the minor was ineligible for tribal membership, mother's parental rights were terminated. Mother appealed.

On appeal, mother claims (1) the San Bernardino County Children and Family Services (CFS) and the court did not comply with ICWA; (2) the court erred in considering the minor's conflicting wishes when mother requested appointment of a child psychologist to determine if the minor understood the significance of adoption; (3) the court erred in finding that termination of parental rights would not be detrimental due to a beneficial parent-child relationship; and (4) there is insufficient evidence to support the finding that the minor is adoptable. We affirm.

BACKGROUND

The minor, then six years old, came to the attention of the Los Angeles Department of Children and Family Services (DCFS) following an incident of domestic violence in which both mother and her live-in boyfriend were under the influence of PCP. The minor was referred to DCFS after police had responded to the disturbance, finding mother's arm was bleeding profusely from a laceration caused either by her attempt to jump out a window, as the boyfriend claimed, or by her boyfriend pinning her to the ground in pursuit of sex, and cutting her with broken window glass.

The incident occurred on May 24, 2012, in the presence of the minor, who informed officers that the boyfriend had hurt her mother, had gotten on top of her, was holding her down, and had hurt her mother in the past. The minor had seen her mother's arm wrapped in a blanket and blood on the vertical blinds. She also told police that her parents (she referred to the boyfriend as her "daddy") did drugs and sold pills. Officers found drugs and weapons in the home, and PCP was found within reach of the minor.

A dependency petition was filed alleging the child was at risk under Welfare and Institutions Code,[1] section 300, subdivisions (a), serious physical harm, and (b), failure to protect, based on domestic violence in the home, mother's drug use, her history of drug use, and the fact mother allowed her boyfriend to live in the home despite knowledge of

[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

his drug use in the minor's presence. The minor was detained.[2] At the detention hearing, mother denied any American Indian heritage.

In October 2012, the criminal charges against the mother for child endangerment and drug possession were dismissed. Drug testing conducted in connection with that case showed the presence of opiates on multiple occasions; however, a medical report accompanying the criminal records revealed mother suffers from chronic pain attributed to a diagnosis of lumbosacral spondylosis without myelopathy, degeneration of lumbar or lumbar-sacral intervert, and lumbar radiculitis. The last minute information to the court indicated that mother was enrolled in counseling, a drug education program and domestic violence services, she was visiting the minor appropriately, and that while her drug tests were positive, it was possibly related to prescription medication.

At the adjudicatory hearing, the court dismissed the physical abuse allegation under section 300, subdivision (a), pursuant to the parties' mediation agreement, and sustained the petition allegations under section 300, subdivision (b), declaring the minor to be a dependent. The minor was removed from her mother's custody, and services were ordered for mother, but services were denied for father.[3]

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[2] The minor's biological father had been deported to Belize following a criminal matter, and never appeared for these proceedings in the trial court. He is not a party to this appeal.

[3] Mother has had five children. Two daughters were removed from mother's custody in 1996. Mother's parental rights to those children were terminated in 1999, and they were adopted by their maternal grandmother in 2001. Mother also has two sons, who were incarcerated at the time of the instant matter.

Mother received services in Los Angeles County, and by June 2013, mother sought liberalized visits. Her visits had had not been liberalized because her drug tests showed the presence of cocaine on two occasions, in addition to the tests showing the presence of opiates, and multiple missed tests. DCFS also noted that mother informed the social worker she had moved to San Bernardino County, where she was living in a domestic violence shelter and enrolled in domestic violence counseling.

Beginning on June 17, 2013, prior to the six-month status review hearing, there were a series of transfers between Los Angeles and San Bernardino County, where mother had moved. After several transfers to San Bernardino which were declined due to the approach of statutory deadlines with insufficient time to conduct an evaluation and lack of evidence that mother's move was permanent, San Bernardino finally accepted the transfer in March 2014, after mother's residence in San Bernardino was determined to be permanent. San Bernardino kept the previous family reunification plan in place.

On June 9, 2014, the social worker submitted the status review report for the 18-month review hearing pursuant to section 366.22, recommending a permanency plan of Planned Permanent Living Arrangement (PPLA). Mother had completed a six-month substance abuse education program and had completed 10 out of 17 sessions of individual counseling. She had enrolled in domestic violence counseling and had completed parenting classes. Additionally, she had enrolled in sexual assault counseling sessions, and was enrolled in St. John of God Health Care Services in Victorville, where

she attended group and individual counseling, as well as 12-step self-help support meetings, relapse prevention, and random drug testing.

However, she still tested positive for opiates due to her prescription pain killers, despite the availability of non-narcotic pain medications. The social worker recommended that services be terminated because after two years mother had not demonstrated she had benefitted from services, she had a history of losing parental rights to two older children, as well as the fact that she had not yet submitted to a court-ordered psychological evaluation and was out of compliance with the aftercare services. Nevertheless, mother's visits, which were complicated by the fact that mother lived in San Bernardino County while the child remained in Los Angeles County, were appropriate.

On June 12, 2014, on the eve of the review hearing, mother provided documents showing that she was in compliance with aftercare services, as well as a cursory one-page psychological evaluation comprising only a handwritten diagnosis, without any evaluation. The diagnosis reflected mother suffered from depression and chronic pain and assessed her global functioning as 50 out of 65.

The social worker questioned the depth of mother's recovery because she had received services for well over two years but completed the service objectives only after the case was transferred back to San Bernardino. The social worker was concerned about the sincerity of letters of support proffered by mother along with her certificates, which attested to her being a role model and an inspiration for others and deserving of having

her children returned, where she failed to reunify with her two older children, and offered no clear picture indicating what had changed since then. The next day, at the scheduled time for the review hearing, the matter was set as contested and continued.

On August 20, 2014, the social worker presented additional information to the court regarding an incident involving mother at the Victorville CFS office. Mother had come to meet with the social worker to discuss liberalizing visits and the minor's return to her custody, but while there, she requested gas cards, which were not yet available. During the meeting, the social worker asked mother about the incident that had given rise to the child's removal, causing mother to become agitated. In the lobby, mother made a spectacle of herself because the gas cards were unavailable and demanded the presence of a third person the next time she met with the social worker. The social worker concluded that mother had completed services but had not benefitted from them, and that mother continued to pose a concern to CFS about her ability to parent and care for her daughter.

The 18-month status review hearing took place on August 22, 2014, at which time the court terminated reunification services, found that terminating parental rights would be detrimental, adopted a permanent plan of PPLA, found the extent of mother's progress to be moderate, provided mother to receive informal services under the child's permanent plan for six months, and ordered mother to undergo psychological and medication evaluations. Also at this hearing, the court ordered the social worker to evaluate the change of placement of the minor to the high desert area, which had not yet occurred, because arranging visitation was problematic with school in session. Finally, minor's

counsel requested that visits be monitored and that mother be instructed to not request or help the minor write letters to the court asking to be returned to her mother.

The minor was moved to the high desert area of San Bernardino County on September 18, 2014, but the move was very emotional for the child. The minor had previously expressed a desire to move to the high desert, but upon making the move, she informed the social worker that she had been manipulated into saying she wanted to move. The minor's caregiver asked the minor if she wanted to call her mother daily, but the minor expressed anger toward her mother.

On December 1, 2014, at a nonappearance review, the social worker requested authority to limit the frequency and duration of visits to twice per month for one and one-half hours, due to the child's school and afterschool schedules. On January 15, 2015, the mother filed a section 388 petition for modification (JV-180 Request to Change Court Order), seeking to change the orders terminating services and denying return of custody, made at the 18-month reviewing hearing. Mother's application described as changed circumstances the fact that she had completed the psychological evaluation, and as a showing of best interests, she stated that the minor had been in mother's custody from birth to the time of removal, and that she asks mother when she is coming home; mother stated the minor is depressed.

CFS filed a response to mother's modification petition, in combination with the post permanency status review. In that report, the social worker explained that mother's drug tests continued to reflect the presence of benzodiazepines and opiates. Additionally,

the psychological evaluation showed a diagnosis of major depressive disorder, moderate, recurrent, with anxious distress and Post-Traumatic Stress Disorder (PTSD), and indicated mother lacked capacity to parent safely and effectively, supporting the conclusion that return of custody would be inappropriate. The psychological report described mother as a questionable historian, who was not open about the reasons for the minor's removal and denied drug use.

The response also indicated that during visits, mother appears to manipulate the minor, but the minor did not desire to be adopted because she feared losing contact with mother and other family members. At the post-permanency hearing, the court terminated all services to mother (she was receiving limited services under the minor's plan), found compelling reason to not conduct a section 366.26 hearing, and ordered continued placement with her foster parents with a goal of guardianship. The court also denied mother's 388 petition. On April 16, 2015, the social worker sought to have educational rights transferred to the caregivers, which was granted.

On August 19, 2015, CFS submitted a post-permanency report pursuant to section 366.3, recommending a hearing pursuant to section 366.26 to establish a guardianship, because the caregivers had expressed willingness to become legal guardians. The report indicated mother had been consistent with visits, which were supervised by CFS despite the termination of services, but mother continued to discuss the case with the child, telling the child she will come home soon. At the hearing, held on August 24, 2015, the court found that the permanent plan of PPLA was no longer appropriate and set a section

366.26 hearing to establish a guardianship because there was a compelling reason to believe that termination of parental rights would not be in the minor's best interests.

On December 22, 2015, the date of the section 366.26 hearing, mother filed another section 388 petition (form JV-180), asserting that the minor had not been interviewed about her desire to return to mother's custody and that mother had been a victim of stereotyping and discrimination. Mother also indicated she now had a permanent residence. The court summarily denied the petition for failing to state new facts or changed circumstances and not showing how a modification would be in the child's best interests.

The court then proceeded with the section 366.26 hearing at which it found that terminating parental rights would be detrimental and that the child would benefit from maintaining the relationship. The caretakers were appointed as legal guardians and the dependency was dismissed.

In November 2017, approximately two years after the guardianship was established, the legal guardians filed a request to modify the court order for guardianship because the minor asked if the guardians would adopt her. Mother objected to the guardians' modification petition, arguing that the guardians had misconstrued the minor's question to mean she wanted to be adopted; mother requested that the minor be interviewed in chambers. Mother also filed her own modification petition raising, as changed circumstances, the fact that the former live-in boyfriend and abuser had committed suicide, so there is no current threat, and the minor wants to return to mother's

custody. Mother's request to change a court order was summarily denied because it failed to promote the child's best interests, and because mother's statements of the minor's desires are in conflict with statements made by the minor to the social worker and three letters from the minor to the social worker.

The social worker responded to the guardians' modification request recommending that the dependency be reinstated and that the court set a new section 366.26 hearing with a goal of adoption. The social worker attached a letter from the minor stating she wanted to be adopted by her guardians. In her response to mother's petition, the social worker pointed out that in addition to the minor's expressed desire to be adopted, mother had been involved in another domestic violence incident on January 19, 2018, demonstrating she had not benefitted from services.

On January 30, 2018, the date of the hearing on the modification petition, mother made motions to exercise her right to examine the child, the social worker, and the guardians, and for appointment of a bonding expert, along with a new Parental Notification of Indian Status (ICWA-020), indicating she had Cherokee, Blackfoot, and Apache ancestry. At the modification hearing, the court granted the guardians' petition, and set a hearing pursuant to section 366.26, over mother's objection. The court denied mother's motion for appointment of a bonding expert, without prejudice, and found that a permanent plan of adoption of the minor is appropriate.

CFS sent out notices to the Eastern Band of Cherokee Indian (EBCI), White Mountain Apache Tribe, San Carlos Apache Tribe, Tonto Apache Tribe of Arizona, the

Bureau of Indian Affairs (BIA), Jicarilla Apache Nation, Blackfeet Tribe of Montana, Cherokee Nation of Oklahoma, Yavapai-Apache Nation, United Keetoowah Band of Cherokee Indians of Oklahoma, Apache Tribe of Oklahoma, Fort Sill Apache Tribe of Oklahoma, and the Mescalero Apache Tribe.

CFS received returned receipts from the Cherokee Nation of Oklahoma, United Keetoowah Band of Cherokee Indians in Oklahoma, Mescalero Apache Tribe, San Carlos Apache Tribe, Blackfeet Tribe of Montana, Apache Tribe of Oklahoma, Fort Sill Apache Tribe of Oklahoma, Jicarilla Apache Nation, Tonto Apache Tribe of Arizona, White Mountain Apache Tribe, Yavapai-Apache Nation, the BIA, and the EBCI. On March 12, 2018, CFS received letters informing it that neither mother nor minor were eligible for tribal membership from the Mescalero Apache Tribe and EBCI. Later, the San Carlos Apache Tribe wrote to CFS to state that neither mother nor minor were eligible for membership in that tribe.

On May 21, 2018, CFS submitted its report for the section 366.26 hearing, recommending termination of parental rights and adoption. The social worker noted that there were some ICWA responses outstanding, but that five tribes found the mother and minor were ineligible for membership. The report also noted that the minor did not want to visit or be left alone with mother because the mother made disparaging remarks about the guardians; the minor complained that her mother did the same things over and over expecting the minor to go along, but the minor did not want to be like her mother. Instead, the minor wanted to be adopted.

On May 30, 2018, mother filed another section 388 petition seeking modification of the order made on January 30, 2018. Mother alleged her circumstances were changed because the original dependency was based on domestic violence witnessed by the minor, but that the abuser was deceased so the mother is no longer fearful, and the minor's safety from domestic violence is no longer an issue. Mother also filed an Opposition to Adoptability claiming the minor did not want to be adopted and the social worker's opinion to the contrary was a misinterpretation of a question posed by the minor as to whether the guardians will adopt her. The court summarily denied the petition due to lack of new evidence or change of circumstances, and no showing that the proposed modification would be in the child's best interests.

On July 27, 2018, the social worker submitted additional information to the court regarding the minor's feelings about adoption. The minor clarified that she did not want to return to her mother's care. While the minor loves her mother and wants to maintain a relationship with visits, she strongly wanted to be adopted by the guardians. Four days later, mother again submitted an objection to adoptability, claiming to have newly discovered evidence that the minor did not want to be adopted, and requesting an in-chambers interview of the minor. Concurrently, mother filed yet another section 388 petition, this time alleging new evidence that on a recent visit the minor spontaneously said she was afraid of the guardians and that she was being pressured by minor's counsel. The court summarily denied the request because the matter was set for a section 366.26 hearing where those issues were already to be addressed by the court.

On July 31, 2018, the court conducted the section 366.26 hearing and denied mother's section 388 petition. The court considered the wishes of the child and found by clear and convincing evidence that it was likely the child would be adopted. Mother's parental rights were terminated. Mother appeals.

DISCUSSION

1. *The Court and CFS Complied with ICWA*

Mother argues that there is no evidence in the record that CFS provided proper ICWA notice subsequent to January 30, 2018, the date when she submitted her Notification of Indian status. As such, mother argues that the court erred in determining that ICWA did not apply, suggesting that the court did not make an express finding to that effect. We disagree.

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912; *In re Holly B.* (2009) 172 Cal.App.4th 1261, 1266.) If there is reason to believe the child that is the subject of the dependency proceeding is an Indian child, ICWA requires notice to the child's Indian tribe of the proceeding and of the tribe's right of intervention. (25 U.S.C. § 1912(a); see also Welf. & Inst. Code, § 224.2, subd. (b).)

"Notice is a key component of the congressional goal to protect and preserve Indian tribes and Indian families [because] it ensures the tribe will be afforded the opportunity to assert its rights under [ICWA] irrespective of the position of the parents,

Indian custodian or state agencies." (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.) It is only after proper and adequate notice has been given and neither a tribe nor the BIA has provided a determinative response within 60 days that section 224.3(e)(3) authorizes the court to determine that ICWA does not apply. (*In re Isaiah W.* (2016) 1 Cal.5th 1, 11.)[4]

California Rules of Court, rule 5.481(b), requires the social worker or the court to send the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) to the parent, guardian, Indian custodian, and the child's tribe. Rule 5.482(b) requires that "[p]roof of notice filed with the court must include *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), return receipts, and any responses received from the Bureau of Indian Affairs and tribes." (See *In re Marinna J.* (2001) 90 Cal.App.4th 731, 739, fn. 4.) The Rules of Court parallel the requirements of the federal "Guidelines for State Courts; Indian Child Custody Proceedings," 80 Federal Register 10146, 10153 (Feb. 25, 2015), and require that an original or a copy of each ICWA notice be filed with the juvenile court along with any return receipts. (Guidelines, *supra,* 80 Fed.Reg., at p. 10154.)

"[T]he ICWA notice, and return receipts, and responses of the Bureau or tribe, if any, must be filed with the juvenile court." (*In re Karla C.* (2003) 113 Cal.App.4th 166,

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[4] In *Isaiah W.*, the California Supreme Court also held that due to the continuing nature of the duty to inquire if a child is an Indian child, the issue of the propriety of the court's finding that ICWA does not apply is not forfeited and may be raised on appeal from a subsequent order. (*Isaiah W.*, *supra*, 1 Cal.5th at p. 11.)

175-176; see also *In re H.A.* (2002) 103 Cal.App.4th 1206, 1214-1215.) A statement in a social worker's report that he or she sent ICWA notice is not sufficient evidence of compliance with notice requirements. (*In re Karla C., supra*, at p. 178.) Absent evidence demonstrating the adequacy of the notice, a tribe's nonresponse may not be deemed tantamount to a determination that the minor is not an Indian child. (*Ibid*.)

However, in this case there are proper notices and several responses, apparently overlooked in the record, which satisfy the requirements of ICWA. At the inception of the dependency action in Los Angeles County in 2012, mother submitted a form ICWA-020, Parental Notification of Indian Status, stating she did not have American Indian Ancestry. The juvenile found that ICWA did not apply. Six years later, in January 2018, mother submitted a new form ICWA-020, indicating she might have Indian ancestry in the Cherokee, Blackfoot, and Apache tribes. On January 30, 2018, based on this new information, the court ordered mother to provide ICWA information to the social worker within two weeks.

The record reveals that CFS complied with the applicable statutes and rule in giving notice to the tribes. As detailed above but overlooked by mother,[5] the social worker sent ICWA notices to the EBCI, White Mountain Apache Tribe, San Carlos Apache Tribe, Tonto Apache Tribe of Arizona, the BIA, Jicarilla Apache Nation, Blackfeet Tribe of Montana, Cherokee Nation of Oklahoma, Yavapai-Apache Nation, United Keetoowah Band of Cherokee Indians of Oklahoma, Apache Tribe of Oklahoma,

[5] Omitting references to matters in the record does not assist our review.

Fort Sill Apache Tribe of Oklahoma, and the Mescalero Apache Tribe, on February 27, 2018,

CFS also submitted to the court certified mail receipts from the Cherokee Nation of Oklahoma, United Keetoowah Band of Cherokee Indians in Oklahoma, the Mescalero Apache Tribe, the San Carlos Apache Tribe, the Blackfeet Tribe of Montana, Apache Tribe of Oklahoma, Fort Sill Apache Tribe of Oklahoma, Jicarilla Apache Nation, Tonto Apache Tribe of Arizona, White Mountain Apache Tribe, Yavapai Apache Nation, the EBCI, and the BIA, explaining the efforts undertaken by CFS to notify the relevant tribes of the dependency action.

Letter responses were received from the Fort Sill Apache Tribe, Mescalero Apache Tribe, the Eastern Band of Cherokee Indians, and the San Carlos Apache Tribe, indicating that the mother and the minor are neither enrolled members nor eligible to become members of those tribes.

Mother also complains that the court failed to make an express finding that ICWA did not apply, citing *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413, and *In re Nikki R.* (2003) 106 Cal.App.4th 844, 852. However, the record includes an express, written finding that ICWA did not apply on May 30, 2018.

Therefore, contrary to the mother's contentions, the record shows the court and CFS provided proper notice to the tribes, after which, the court expressly found that ICWA did not apply. There was no error.

2. *The Court Properly Considered the Wishes of the Child.*

Mother argues that the juvenile court erred in considering the conflicting wishes of the minor in considering mother's request for appointment of a child psychologist to determine whether the minor truly understood the significance of adoption and severance of ties with her mother. Our review of the record, detailed above, indicates mother's trial counsel made a motion for the appointment of a bonding expert, to report on the relative strength of the parent-child relationship. There was no request to appoint a child psychiatrist to determine if the child understands the significance of adoption. "Having failed to object to the adoption assessment's adequacy in the juvenile court, [mother has] waived any such objections on appeal." (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1317; *In re Brian P.* (2002) 99 Cal.App.4th 616, 623.)

We turn instead to the question of whether the court properly considered the child's wishes. Section 366.26 governs the conduct of a hearing to select and implement a permanent plan for a child, and the procedures for terminating parental rights. Subdivision (h)(1) of section 366.26 provides that at all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child. Further, section 366.26 authorizes a court to refuse to terminate parental rights after a finding of adoptability if the child is 12 years of age or older and objects to the termination of parental rights. (§ 366.26, subd. (c)(1)(B)(ii).)

The statute has been interpreted to require the juvenile court to receive direct evidence of the children's wishes regarding termination and adoption at the permanency

planning hearing. (*In re Diana G.* (1992) 10 Cal.App.4th 1468, 1480.) This evidence may be presented by direct formal testimony in court, informal direct communication with the court in chambers, reports prepared for the hearing, letters, telephone calls to the court, or electronic recordings. (*Ibid.*; *In re Joshua G.* (2005) 129 Cal.App.4th 189, 201.) However, there is "no requirement in section 366.26 . . . that evidence indicating the child's wishes be direct or that the child be aware that the proceeding is a termination action for purposes of assessing the child's preferences." (*In re Leo M.* (1993) 19 Cal.App.4th 1583, 1592.)

It is undisputed that in the earlier stages of the dependency, the minor was bonded to mother and expressed a wish to return home to her mother. However, as the proceedings went on, the mother began to manipulate her daughter. As the child matured, she began to resist mother's manipulation and consistently expressed the wish to remain with her caretakers and to not return to her mother. In the end, the minor explained she loved her mother and wished to maintain contact with her, but she absolutely did not want to live with her mother and strongly wanted to be adopted. There is no evidence the minor was conflicted.

Nevertheless, when mother raised the issue that the minor was being pressured to say she wanted to be adopted, or that the minor's wishes were misinterpreted, CFS went to great lengths to ascertain whether this was true. Consistently, the child reiterated her desire to be adopted and the fact that she had not been influenced by the caretakers, although she did say mother had attempted to influence her decision. The record also

shows CFS clarified whether the minor understood the concept of adoption; the minor consistently demonstrated that she understood it and that she was the party who initiated the discussion of adoption, so CFS found no evidence of prompting.

There was no error in considering the child's wishes.

3. *The Court Correctly Concluded that the Parent-Child Relationship Did Not Outweigh the Stability and Permanence of the Adoptive Home*

Mother argues, without proper reference to a statutory basis, that the court should have found that the "section 366.26, subdivision (a) exception to adoption applied in this case." Insofar as section 366.26, subdivision (a), contains no reference to exceptions to an adoptability finding, and because mother's argument refers to the beneficial parent-child relationship, we will construe her claim to be a challenge to the court's finding that adoption would not be detrimental based on the exception found in section 366.26, subdivision (c)(1)(B)(i).

Section 366.26 provides that at a selection and implementation hearing, the juvenile court determines a permanent plan of care for a dependent child, which may include adoption. (*In re E.T.* (2018) 31 Cal.App.5th 68, 75-76.) "'"If the dependent child is adoptable, there is strong preference for adoption over the alternative permanency plans." [Citation.]'" (*Id.* at p. 76.) Thus, "[i]f the parents have failed to reunify and the court has found the child likely to be adopted, the burden shifts to the parents to show exceptional circumstances exist such that termination would be detrimental to the child." (*In re Grace P.* (2017) 8 Cal.App.5th 605, 611, citing *In re Autumn H.* (1994) 27

Cal.App.4th 567, 574 (*Autumn H.*); see also *In re L.S.* (2014) 230 Cal.App.4th 1183, 1199.)

One such exceptional circumstance is the "parental benefit" exception. It applies when the court finds a compelling reason for determining that termination would be detrimental to the child based on two criteria: the parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i); *In re Anthony B.* (2015) 239 Cal.App.4th 389, 394–395.)

"The first prong is quantitative and relatively straightforward, asking whether visitation occurred regularly and often." (*In re Grace P.*, *supra*, 8 Cal.App.5th at p. 612.) "It is not an inquiry into the quality of visitation; this prong simply evaluates whether the parent consistently had contact with the child." (*Ibid.*, citing *In re I.R.* (2014) 226 Cal.App.4th 201, 212.)

The second prong requires a parent to prove that the bond between the parent and child is sufficiently strong that the child would suffer detriment from its termination. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 450.) In applying this exception, the court must take into account numerous variables, including but not limited to: (1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the "positive" or "negative" effect of interaction between parent and child, and (4) the child's unique needs. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

Here, the mother met the first prong by maintaining regular visitation. By all accounts, the visits went well and the minor enjoyed the contact up to the point of the section 366.3 hearing in August 2015. However, by January 2018, the minor did not want to live with her mother, did not want to visit, and, in fact, she did not want to be left alone with her mother. Despite mother's belief that the guardians were pressuring the child into writing letters expressing a desire to be adopted, the minor consistently reported that she understood the significance of adoption and was definite in her desire to be adopted.

More importantly, there were serious concerns that mother was unable to parent the minor and that she had not benefitted from services, as reflected by the psychological evaluation, mother's involvement in another violent relationship in January 2018, and her efforts to manipulate the minor. While mother's residence was adequate in 2014, there was no evidence of her living situation in 2018. Further, her continued reliance on opiate pain killers, after her history of using PCP and cocaine, demonstrated mother could not provide a stable and secure environment for her child even after six years of monitoring by the juvenile court.

Thus, while mother met the first prong of consistent contact, the issue was whether maintaining the relationship would benefit the minor, within the meaning of section 366.26. The "benefit" necessary to trigger this exception requires that the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. "'In other words, the

court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.'" (*In re Anthony B., supra,* 239 Cal.App.4th at p. 397; *In re J.C.* (2014) 226 Cal.App.4th 503, 528–529, citing *In re Autumn H., supra*, 27 Cal.App.4th at pp. 567, 575.)

Despite the efforts made by mother between the time of the transfer to San Bernardino County and the institution of the guardianship, her efforts were considered superficial by CFS in light of mother's continued reliance on prescription drugs (where non-narcotic pain medication was available and effective), and her propensity to involve herself in violent relationships, coupled with her attempted manipulation of the minor, demonstrated that the strength and quality of the natural parent/child relationship in a tenuous placement was outweighed by the security and the sense of belonging the guardians would confer. The juvenile court correctly determined that termination of parental rights would not be detrimental to the child.

4. *There was Substantial Evidence to Support the Finding of Adoptability*

Mother argues that the finding the minor was likely to be adopted was not supported by substantial evidence. We disagree.

"The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time." (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1204, citing *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223; § 366.26, subd. (c)(1).) "The issue of adoptability posed in a section 366.26 hearing focuses on the *minor*, [that is], whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor." (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) We review the record to determine if it contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that the child was likely to be adopted within a reasonable time. (*In re J.W.* (2018) 26 Cal.App.5th 263, 267.)

Here, the record shows the minor was not afflicted with severe disabilities or behavior problems. While she was in her early teens by the time of the selection and implementation hearing, she had been placed with her prospective adoptive family for approximately three years. The guardians/prospective adoptive parents and the minor were consistent in expressing the desire for adoption. The mother has failed to point to any evidence that undermines the juvenile court's determination that the minor was adoptable.

Mother also complains that the social worker failed to conduct an assessment. However, mother failed to object to the adequacy or lack of an assessment in the trial court, so mother waived any such objections on appeal. (*In re A.A., supra,* 167 Cal.App.4th at p. 1317; see also, *In re Brian P., supra,* 99 Cal.App.4th at p. 623.) Mother

does not address nor refer to the record which includes assessments of the adoptive parents when they were being considered for appointment as legal guardians for the minor. Nor does mother address the information about the caretakers included in the social study prepared in response to the guardians request to modify the permanent plan in favor of adoption. There, the social worker evaluated the relationship between the minor and her guardians in the home of the guardians, and recommended the setting of a section 366.26 hearing with a goal of adoption.

In the section 366.26 report, the social study included an adoption assessment, indicating that the minor had been in seven placements since she was removed from mother's custody in 2012, but that she had found stability and permanency in the guardians' home. The minor displayed a strong and healthy bond to the prospective adoptive parents, whom she referred to as "mom" and "dad" and who were eager to adopt. Any inadequacy of the adoption assessment was forfeited.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.